

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMBAT MEDICAL SYSTEMS, LLC,)	
)	
Plaintiff,)	
)	No. 22-437C
v.)	(Judge Roumel)
)	
THE UNITED STATES,)	
)	
Defendant.)	

JOINT MOTION TO AMEND THE DISCOVERY SCHEDULE

Pursuant to Rules 6(b) and 16(b)(4) of the Rules of the United States Court of Federal Claims, plaintiff, Combat Medical Systems, LLC (Combat), and defendant, the United States, jointly and respectfully request to extend the period for completing fact discovery by 42 days, to and including October 27, 2023.¹ The current deadline for fact discovery is September 15, 2023. May 1, 2023 Minute Order granting ECF No. 27. The parties jointly and respectfully propose to file a joint status report on or before November 13, 2023, discussing the parties' amenability to participating in alternative dispute resolution, and proposing a schedule for further proceedings. *See* ECF No. 21.

The parties have been continuing with discovery and have been making progress. After the May 1, 2023 joint motion, ECF No. 27, the Government served a subpoena for documents on third party RSM, and served an additional subpoena for documents on third party Plante Moran, on May 3 and 4, 2023, respectively. The Government has received some documents from RSM

¹ To be clear, the parties anticipate a need for expert discovery after the completion of fact discovery.

and Plante Moran.² Further, the parties received additional documents from Flex Ltd. (Flex) on June 23, 2023, and jointly interviewed two flex witnesses for three hours on June 29, 2023.

One of the main reasons that the parties need additional time to complete fact discovery is that Flex, Combat's manufacturer, is continuing to search for documents responsive to the parties' subpoenas. During the parties' June 29, 2023 joint interview with Flex witnesses (and Flex counsel), we learned that Flex possesses additional responsive documents that it has not yet produced. Combat served Flex with a subpoena for documents on October 20, 2022, and the Government did so on February 10, 2023. Flex provided documents on March 27, April 12, and June 23, 2023, and has thus far been cooperative with the discovery process, but needs more time to find the remaining responsive documents. The parties believe that at least some of the documents that Flex possesses, but has not yet produced, are highly relevant to this matter. The parties want to collect all of the relevant Flex documents before taking depositions of Flex witnesses and/or conducting any further joint interviews of Flex witnesses.

Another reason the parties would like to extend the discovery period is to allow time for settlement discussions, after more information is obtained. The parties have had some discussions about settlement. The parties expect that additional documents from Flex will be useful in further settlement discussions. The parties are interested in taking some time to discuss settlement after more documents from Flex are obtained, but before depositions commence. A longer discovery period will allow the parties more time to discuss settlement throughout the process.

² The Government understands that RSM has located, but not produced, additional responsive documents. The documents have been withheld for a privilege review, and Combat is in communication with RSM as to a potential privilege log.

Thus, there is good cause to extend the period for fact discovery. The parties expect that the requested 42-day extension, to and including October 27, 2023, will be sufficient time to complete fact discovery. For these reasons, the parties respectfully request that the Court amend the schedule to extend the deadline for fact discovery to October 27, 2023. The parties respectfully propose to file a joint status report on or before November 13, 2023, discussing the parties' amenability to participating in alternative dispute resolution, and proposing a schedule for further proceedings.

Respectfully submitted,

/s/ Steve M. Sorett
Steve M. Sorett
KUTAK ROCK LLP
1625 Eye Street, N.W.
Suite 800
Washington, D.C. 20006
Tel: (202) 828-2400
Fax: (202) 828-2488
Steve.sorett@kutakrock.com

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

PATRICIA M. McCARTHY
Director

/s/ Deborah A. Bynum
DEBORAH A. BYNUM
Assistant Director

OF COUNSEL:

Bradley P. Boyer
KUTAK ROCK, LLP
777 S. Figueroa Street, Suite 4550
Los Angeles, CA 90017
Tel: (213) 312-4000
Fax: (213) 312-4001
Bradley.Boyer@kutakrock.com

/s/ Joshua A. Mandlebaum
JOSHUA A. MANDLEBAUM
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 305-3091
Fax: (202) 353-0461
joshua.a.mandlebaum@usdoj.gov

OF COUNSEL:

Miroslava Sharpe
KUTAK ROCK LLP
1625 Eye Street, N.W.
Suite 800
Washington, D.C. 20006
Tel: (202) 828-2400
Fax: (202) 828-2488

KELLY L. DIAZ-ALBERTINI
LINDSAY A. SALAMON
Senior Counselors, Litigation
KATHERINE McCULLOCH
Senior Counsel, Medical

Attorneys for Plaintiff

July 7, 2023

MARIAM W. IBRAHIM
Assistant Counsel, Medical
DLA Counsel-Troop Support
Philadelphia, Pennsylvania

Attorneys for Defendant